Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

William Allan MacNeill,

complainant,

and

Canadian Union of Postal Workers,

respondent.

Board File: 28996-C
Neutral Citation: 2011 CIRB **617**
December 8, 2011

The Board, composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Terence Lineker and John Bowman, Members, considered the above-noted complaint.

The Board has exercised its discretion pursuant to section 16.1 of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*) to decide these matters without an oral hearing.

These reasons for decision were written by John Bowman, Member.

Counsel of Record

Mr. William Allan MacNeill, for himself;
Mr. George Kuehnbaum, Canadian Union of Postal Workers.

I – Introduction

[1] The complainant, Mr. William Allan MacNeill, is an employee of Canada Post Corporation (the employer) and a member of the Toronto local of the Canadian Union of Postal Workers (CUPW or the union). On September 3, 2011, the complainant attended a special meeting of the local union that was convened to elect delegates to the national union convention scheduled for October 24 - 28, 2011. It was determined by the national union that the complainant was not eligible to run for election as a convention delegate because he had allegedly not met certain pre-requisites required under the union's constitution.

[2] On October 5, 2011, the complainant filed a complaint against the union, alleging that it had committed an unfair labour practice under section 95 of the *Canada Labour Code (Part I Industrial Relations)* (the *Code*), by discriminating against him during the course of the delegate election process.

[3] The complaint raises a number of potential questions for the Board. Is the right to run for election as a delegate to a union convention a subject that is within the scope of the Board's jurisdiction under section 95 of the *Code*? If so, is it a matter that the Board should determine when the complainant did not pursue any possible internal union remedies prior to filing this complaint with the Board? There is also an issue as to whether the union's action amounts to "disciplinary action" or a "penalty" and, if so, whether the decision of the union to remove the complainant from the list of potential convention delegates was made in a discriminatory manner.

II – Overview

[4] The complainant was one of a number of members of the Toronto local of the union who were declared ineligible to stand for election as a delegate to the national convention of the union. The complainant was aware prior to the special meeting on September 3, 2011 that there was an issue regarding his eligibility to run for election as a convention delegate but did not raise any issue with the union until he actually attended the meeting. The complainant spoke to the President of the Local union at the September 3rd meeting regarding the fact that his name was not on the list of eligible

candidates and was allegedly told to bring the issue up at the local union meeting later that month. The complainant did not pursue the matter at the following local union meeting, or at any other union meeting.

[5] Article 3.05 of the union's national constitution sets out certain pre-requisites that members must meet before they can be elected as national convention delegates. The pre-requisites involve attendance at various meetings or conferences. The provision also allows members to be excused from meeting the pre-requisites under certain circumstances by the local union and the National Director of the union. The complainant was declared ineligible to run as a delegate to the convention because it was alleged that he was absent from one of the required meetings for ninety minutes without authorization. A total of eleven members were declared ineligible to run for election for the same reason. The union submits that two of the eleven appealed the decision; were successful in their appeals; and were able to run for positions as convention delegates.

III – Positions of the Parties

A – The Complainant

[6] The complainant submits that he should have been eligible to run for a position as a convention delegate and that he was prevented from running in order to silence him from speaking out regarding certain union policies that he did not agree with. He alleges that candidates who did not meet the pre-requisites under the union constitution were allowed to run for delegate positions, although he provided no evidence to support this allegation. The complainant submits that he was considering running for election to a union officer position at the convention and was denied this opportunity as a result of being declared ineligible for election as a convention delegate.

[7] As a remedy for the alleged breach of section 95 of the *Code*, the complainant seeks an order that a new vote be held to elect convention delegates from the Toronto local; an order to have the national convention "stopped" and the National Constitution suspended; and an order for the "maximum penalty" to be levied against the national union as well as an order for the union to issue a written public apology to the complainant.

B – The Union

[8] The union submits that the complaint should be dismissed because the complainant did not take any steps to appeal the decision of the union to remove him from the list of eligible convention delegates, despite having the opportunity to do so at various union meetings. The union specifically notes that the complainant did not raise the issue of his eligibility for election to the national convention at the September general meeting of the local union despite being advised by the Local Union President to raise the issue at that meeting. The union pointed out that two individuals did appeal the decision to remove them from the eligibility list to run for a convention delegate position, and that the appeals were successful. The union also noted that the complainant was not prevented from running for a position as a national union officer because he was not a national convention delegate, as non-delegates are entitled to run for office. The union asks the Board to dismiss the complaint.

IV- Analysis

[9] While the complainant does not specify which of the numerous subsections of section 95 of the *Code* that he alleges have been violated by the union's conduct, many of the subsections in question do not apply to the facts of this case. The Board therefore is treating this complaint as an allegation that the union has breached section 95(g) of the *Code*, which reads as follows:

> 95. No trade union or person acting on behalf of a trade union shall
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> ...
>
> (g) take disciplinary action against or impose any form of penalty on an employee by applying to that employee in a discriminatory manner the standards of discipline of the trade union;

[10] The Board's jurisprudence involving section 95 of the *Code* has typically involved situations where a member has been disciplined as a result of some internal union disciplinary proceeding.

Often such discipline includes suspension from union membership or expulsion from the union. A number of these cases arose from a dispute between CUPW and the Letter Carriers' Union of Canada (LCUC) during the 1990s, when CUPW levied discipline against certain members for supporting the LCUC in various campaigns to displace CUPW as the certified bargaining agent for Canada Post Corporation employees.

[11] In *Paul Horsley et al.* (1991), 84 di 201; and 15 CLRBR (2d) 141 (CLRB no. 861), the predecessor to this Board, the Canada Labour Relations Board (CLRB) dealt with a case where it was alleged that the union breached sections 95(f), (g) and (h) of the *Code* when it expelled the complainants from the union for refusing to withdraw their membership in the LCUC. Prior to their expulsion from the union, the complainants had been removed from their shop steward positions in CUPW. In ultimately finding a breach of section 95 by the union, the CLRB indicated that the earlier removal of the complainants from their shop steward positions was not an issue the Board was concerned about. The Board stated:

> From that starting point let us go right to what we see as the crux of these complaints, i e., the conduct of the NEB and the Appeal Board after the complainants had been removed from their shop steward offices by the Pacific Regional Disciplinary Committee. **Up to that point it seems to us that CUPW's actions were mostly a matter of internal union affairs with little or no public interest.** The complainants tell us that if the matter had ended there they would not in all likelihood have complained. ...
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> (page 208; page 148; emphasis added)

[12] In *Nathalie Beaudet-Fortin* (1997), 105 di 98; 40 CLRBR (2d) 161 (CLRB no. 1216), the complainant had been expelled from CUPW for supporting an unsuccessful campaign by the LCUC to displace CUPW as the certified bargaining agent. The CLRB found the expulsion of the complainant to be a breach of section 95(g) of the *Code* because it deprived the complainant of her right under the *Code* to participate in determining her terms and conditions of employment through her involvement in union activities. The CLRB stated:

> In this case, however, the union's decision to expel the complainant indefinitely deprived Ms. Beaudet-Fortin absolutely of the right to exercise her free choice to remain a member of the certified bargaining unit, CUPW, following the raiding campaign and to participate in its activities and, consequently, deprived her of the right to deal with her exclusive representative with respect to the determination of her conditions of employment in the same way as the other bargaining unit employees

> who joined the union for this purpose. By expelling the complainant from its ranks, the union deprived her of her right to participate in its activities and to influence the manner in which the certified bargaining unit performed its role in negotiating the collective agreement that governs the complainant's conditions of employment.
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> (page 118; 183)

[13] Later in the same decision, however, the CLRB made it clear that the union could take other measures to enforce internal union rules that did not involve expulsion from union membership. The CLRB stated:

> A union may thus limit access to key positions for individuals who, until recently, have not shown that they have the union's interests, orientation and achievements at heart. **In particular, the union may prevent members from standing as candidates for elected office or from being appointed to representative positions.** Clauses 8.02(b), (c) and (d) of CUPW's constitution already provide for this possibility. The Board recognizes that a union official has a duty of loyalty and must discharge a special fiduciary obligation toward the union and that the union may take harsher measures in such cases to protect its legitimate interests (see on this subject [*Marilyn Coleman et al.* (1995), 28 CLRBR (2d) 1 (B.C.)]). **The union may also prevent members from taking part in union proceedings, except of course where members are called upon to make collective decisions on the negotiation or conclusion of a collective agreement.**
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> (page 119; 184; emphasis added)

[14] In determining whether or not a union has breached section 95 of the *Code*, the Board has focussed on situations where the union's actions have denied a member his or her right to participate in matters that affect their terms and conditions of employment. A decision to expel a member from the union falls within this criteria. On the facts of this case, the Board must decide whether a decision to deny a member the opportunity to run for election as a delegate to a national union convention, taken in accordance with the union's constitution, falls within the scope of section 95, or whether it is entirely an internal union matter, not affecting the member's right to participate in the determination of the terms and conditions of their employment.

[15] The complainant in this case was not expelled from union membership, nor was he disciplined under any internal union disciplinary process. No evidence was presented to suggest that attendance at a national union convention was part of the collective bargaining process, or that the member was denied his right to participate in determining his terms and conditions of employment.

[16] The Board also notes that section 97(4) of the *Code* requires that a union member exhaust the internal union appeal process before making a complaint to the Board under section 95(f) or (g) of the *Code*. In this case, the complainant has provided no evidence to indicate that he attempted to obtain redress through the internal mechanisms provided in the union's constitution prior to making his complaint to the Board.

[17] On the basis of the evidence provided by the complainant, the Board is unable to find that the union's application of the terms of its constitution with respect to the election of delegates to the national convention in the complainant's case constituted "disciplinary action" or a "penalty" within the meaning of the *Code*. The Board finds that attendance at a national union convention is purely an internal union matter that does not fall within the scope of section 95(g) of the *Code*. In light of our decision on this point it is not necessary for the Board to consider the remedies requested by the complainant.

V - Conclusion

[18] For the reasons cited above, the Board finds that the union did not breach section 95 of the *Code*, and dismisses the complaint.

[19] This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

John Bowman
Member

Terence Lineker
Member